Rep. 518. The defendant in the bill being non-resident in the state, it appertained to him, under the circumstances, to show that he had exposed himself to service to the knowledge of the orator or the officer holding the papers, so that service might have been made on him with reasonable convenience, without bargaining or watching for an opportunity. Indeed, no question is made, but that the defendant, as well as the respondents, had sufficient notice and knowledge of the injunction to render it operative upon them, provided it was in force at the time the respondents took the library. The cases cited in their behalf bear in their favor only as touching the order that the court should make as to punishment, by fine or otherwise, for the violation of said injunction: see *Partington* v. *Booth*, 3 Meriv. 148; 4 Paige 444. In this case it is not claimed, or shown, that the respondents acted with intent of violating or disregarding an injunction that was in force. They acted upon the honest, though erroneous opinion, that the injunction had expired. In so doing they violated the legal rights of the complainant. Full satisfaction to the complainant and to the court will be made by the restoration of the library to the possession of the complainant, in the place and condition from which it was taken by the respondents. A proper order will be made to effect such restoration.

United States Circuit Court for Wisconsin. Nov. Term 1867.

JOHN GREENING, OWNER OF SCHOONER PERSEVERANCE, *v.* SCHOONER GREY EAGLE.[1]

The fact that one vessel carries a prohibited light does not absolve another from the observance of the caution and nautical skill required by the exigencies of the case.

Although a *white* light usually represents a vessel at anchor, an omission to watch the light and ascertain from its bearings whether the vessel is in motion, is a neglect of ordinary care and skill, and makes the collision the result of mutual fault.

There may be circumstances under which a vessel that is unable to show the proper lights may nevertheless continue her voyage at night. Per DAVIS, J.

THIS was a libel for collision, first tried at Milwaukee in the

[1] We are indebted for this case to the courtesy of J. D. Cleveland, Esq.—ED. AM. LAW REG.

District Court of the United States for the District of Wisconsin, in which court the action was dismissed. Libellant appealed to the Circuit Court, where the case was again argued on the same pleadings and evidence.

The schooner Perseverance sailed from Chicago on the 19th of November 1864, with a cargo of wheat, bound for Ogdensburgh. When in Lake Michigan, off the Manitow Islands during a severe storm she lost her signal lights which she was unable to replace after making efforts to do so. Owing to the lateness of the season, the severity of the weather, and the extent of her voyage, being unwilling to incur the delay of lying by at night, she proceeded on her way showing at night a white light in order to call the attention of other vessels to her. While running through the Straits of Mackinaw, at two o'clock in the morning of the 24th of November, the schooner Grey Eagle, bound from Buffalo to Milwaukee, collided with her and destroyed both vessel and cargo.

Willey & Cary, of Cleveland, for libellant.

Emmons & Vandyke, of Milwaukee, for defendant.

The opinion of the court was delivered by

DAVIS, J.—It is argued that as the Perseverance was running without the regular lights and with the prohibited white light, she must bear all the damages, although the court should find that the Grey Eagle was also in fault. This position is untenable. It is unquestionably true that the rules of navigation as prescribed by the Act of Congress must be observed, but in obeying and construing these rules, due regard must be had to all dangers of navigation. The fact that the Perseverance had a light prohibited to vessels while sailing, did not of itself absolve the Grey Eagle from the observance of that degree of caution, care, and nautical skill which the exigencies of the case required. If a white light *usually* represented a vessel at anchor, the officers and seamen of the Grey Eagle had no right to conclude that it *always* did. It was their duty from the moment the light was seen, to have watched it carefully, in order to ascertain from its bearings whether the vessel was in motion or at anchor. And if, in the exercise of ordinary nautical skill and care, *this* could have been done, and was omitted, and this omission contributed to the accident, then the Grey Eagle must share the burdens of the loss although

the Perseverance was in fault in running with a prohibited light. I cannot say that a vessel is under all circumstances required to come to an anchor at night, if through misfortune she has lost her signal lights. There may be a state of case in which herself and cargo would be in more peril by delay at night than by pursuing a continuous voyage. It is true that she encounters serious hazard by running at night, but she is so far protected that every other vessel occupying the same waters must be navigated with reasonable care, skill, and caution.

The obligation of the Grey Eagle to use all reasonable precautions to avoid a collision was not varied because the Perseverance was running with a prohibited light. The present case is one of mutual fault, which in my opinion requires a division of damages. It is unnecessary to discuss the evidence at length in order to show carelessness and fault on the part of the Grey Eagle. She is convicted of ordinary want of seamanship in her own statement of the collision.

The answer says, "A white light was seen about a mile distant, which was supposed to be a light on shore or upon a vessel at anchor. The Grey Eagle was then kept away about a point and steadied in her course, to give berth to the light. The light was not discovered to be a vessel's light in motion by the commanding officer until the Perseverance got within about three lengths of the vessel."

And why was this important discovery not sooner made? The night was not too dark to do it, for the evidence is that the sails of the Perseverance could readily have been seen a quarter of a mile off, and the wheelsman of the Grey Eagle (in not the best portion of the vessel to see the light) nevertheless saw it twenty minutes before the collision.

If the light was discovered a mile off, is it not apparent that ordinary vigilance would have disclosed to those on board the Grey Eagle that it was on a vessel in motion long before there was any danger of collision? The vessels could not have kept their respective courses without it being evident to a watchful seaman that the light was in motion. I cannot for want of time analyze the evidence so as to show how the collision could have been avoided if the light of the Perseverance had been properly watched. It is very clear the persons in charge of the Grey Eagle were so confident the light was stationary that they rested

in security and omitted the observations which good and prudent seamanship required to be made, and which, if made, could not have failed to have disclosed to them the character of the light, and enabled them to keep out of the way of the Perseverance. This conduct on the part of the Grey Eagle contributed very materially to the collision, and that vessel should share with the Perseverance the consequences of that disaster.

The Clerk of the Circuit Court is therefore directed to enter an order, reversing the decree of the District Court, and referring the case to a commissioner, to ascertain the damages.

Superior Court of Chicago.

WILLIAM O'MEARA *v.* PATRICK DEAN ET UX.
PATRICK DEAN AND WIFE *v.* O'MEARA.

A deed of her separate estate executed by a married woman without her husband joining, is void.

THESE were cross-bills for partition. One Patrick Rider died in 1856, seised of certain real estate, which he devised equally to his wife, Mary Rider, now Mary Dean, and his daughters, Margaret, Mary Ann, and Catharine. Catharine intermarried in 1862 with one Almeron Smith, and died in 1865, in Memphis, Tenn. In 1864, for a valuable consideration, part of which was paid down, Catharine Smith executed to her mother, residing in Chicago, a deed of her undivided interest in the lot. The deed was formally delivered by Mrs. Smith to the grantee therein, but was afterwards redelivered to her for the purpose of procuring its execution by her husband in Memphis. The husband refused to execute it, and it was never returned to the grantee.

The opinion of the court was delivered by

JAMESON, J.—The question raised is, whether the transfer from Mrs. Smith to her mother was effectual to convey her title, the grantor being at the date of the deed a *feme covert*. This makes it necessary to construe the Statute of 1861, entitled "An Act to protect married women in their separate property." The terms of the act are, "that all the property, both real and personal, belonging to any married woman as her sole and separate pro-